



APR 13 2007

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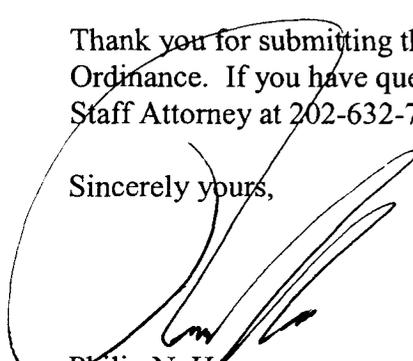
RE: Kiowa Indian Tribe of Oklahoma Amended and Restated Gaming Ordinance

Dear Mr. Araujo:

This letter responds to the request of the Kiowa Indian Tribe of Oklahoma (Tribe) that the National Indian Gaming Commission (NIGC) review and approve amendments to the Tribe's Amended and Restated Gaming Ordinance, approved by the Tribe's Council on March 3, 2007, pursuant to Resolution No. CY-2007-716. The Chairman of the NIGC first approved the Tribe's Gaming Ordinance on August 25, 1995, and further approved an Ordinance Amendment on September 7, 2001, and an Amended and Restated Gaming ordinance on September 8, 2005. This letter constitutes approval of the amendments to the Amended and Restated Gaming Ordinance.

Thank you for submitting the Kiowa Indian Tribe of Oklahoma Amended and Restated Gaming Ordinance. If you have questions or require further assistance, please contact Maria Getoff, Staff Attorney at 202-632-7003.

Sincerely yours,



Philip N. Hogen  
Chairman

cc: Billy Evans Horse, Chairman, Kiowa Indian Tribe of Oklahoma  
Walter F. Kaulity, Chairman, Kiowa Gaming Commission  
Lee Rhoades, Chairman, Kiowa Casino Operations Authority



# Kiowa Tribe of Oklahoma

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Kiowa Business Office

RESOLUTION NO. CY-2007-716

## RESOLUTION OF THE KIOWA BUSINESS COMMITTEE AMENDING IN CERTAIN PARTICULARS THE KIOWA GAMING ORDINANCE OF 2005, AND FOR OTHER PURPOSES

WHEREAS, the Kiowa Indian Tribe of Oklahoma (the "Tribe") is a sovereign nation and from time immemorial has been a sovereign nation; and

WHEREAS, the Tribe is federally recognized by the Secretary of the Interior of the United States as having powers of self government and as being eligible for the special programs and services provided by the United States to Indians, and its sovereignty is thereby recognized by the United States, all as evidenced by order of the Associate Commissioner of Indian Affairs, dated March 13, 1970, approving the constitution and bylaws of the Tribe (the "Constitution"); and

WHEREAS, pursuant to the Constitution and specifically pursuant to Article V, section 2, the Tribe has delegated to its elected representatives, the Business Committee ("Business Committee"), the responsibility and authority to take all necessary action to promulgate and enforce ordinances and codes to protect the general welfare of the Tribe and its members; and

WHEREAS, pursuant to Ballot Issue 94-A-5, the Gaming Ordinance (as defined below) was ratified by a vote of the Kiowa Indian Council on June 18, 1994; and

WHEREAS, by Resolutions No. CY-95-39 and CY-95-40, both dated June 26, 1995, the Business Committee, acting pursuant to the aforesaid delegated power, enacted resolutions to approve and adopt the Kiowa Indian Tribe of Oklahoma Gaming Ordinance of 1995 and the Kiowa Indian Tribe of Oklahoma Gaming Facility Bonding Ordinance of 1995 (together, as amended, the "Initial Gaming Ordinance"); and

WHEREAS, as required under Federal law, the Initial Gaming Ordinance was approved by the Chairman of the National Indian Gaming Commission (the "NIGC"), as indicated by that Chairman's publication of a notice of approval of Class III tribal gaming ordinances, in Volume 61, Federal Register, page 31963, on Friday, June 21, 1996; and

WHEREAS, on July 21, 2001, by Resolution No. CY-2001-045, the Business Committee exercised its authority, as delegated to it by the Kiowa Indian Council and by the Constitution, to amend, in accordance with Article

XIV of the Initial Gaming Ordinance, in certain particulars, the Initial Gaming Ordinance; and

**WHEREAS,** by letter dated September 7, 2001, the NIGC granted its approval of the amendment to the Initial Gaming Ordinance; and

**WHEREAS,** by Resolution CY-2005-176, dated September 3, 2005, the Business Committee further exercised its lawful power of amendment of the Initial Gaming Ordinance, by promulgating the Amended and Restated Gaming Ordinance of 2005 (the "Gaming Ordinance of 2005"); and

**WHEREAS,** pursuant to Federal law, on September 8, 2005, the Chairman of the NIGC approved the Gaming Ordinance of 2005; and

**WHEREAS,** the Gaming Ordinance of 2005, at Article 32 thereof, provides that, "All provisions of this Ordinance are subject to amendment by the Business Committee. All amendments to this Ordinance shall be effective upon the date of passage by the Business Committee, subject to approval by the NIGC." and

**WHEREAS,** pursuant to Business Committee Resolution No. CY-2006-117, the Tribe is a party to a State-Tribal Gaming Compact with the State of Oklahoma, as executed by the Tribe on August 18, 2006, as approved by the Acting Assistant Secretary for Policy and Economic Development, United States Department of the Interior, as of September 5, 2006 and as submitted to the Governor of Oklahoma as of September 15, 2006, and

**WHEREAS,** it has come to the attention of the Business Committee that there may exist an irreconcilable difference between the provisions of the Compact and the Gaming Ordinance of 2005, regarding the resolution of patron disputes; and

**WHEREAS,** the Tribe is also a party to a Pre-Opening Agreement dated August 31, 2005, between the Tribe and the NIGC, as authorized by numerous Business Committee resolutions; and

**WHEREAS,** under the Pre-Opening Agreement, certain regulations of the Kiowa Tribal Gaming Commission are subject to comment and review by the NIGC; and

**WHEREAS,** under Article 8, section (j)(12) and section (j)(1), paragraph M, the Kiowa Tribal Gaming Commission is empowered to promulgate and enforce regulations governing gaming on Kiowa Indian lands, subject to a twenty-eight day notice and comment period; and

**WHEREAS,** it has come to the attention of the Business Committee that in the event the NIGC should require amendment of certain currently final and effective regulations of the Kiowa Tribal Gaming Commission, less than twenty-eight days prior to the scheduled opening of the Tribe's first gaming facility, such a requirement could result in an unwanted delay of such opening, and it has further come to the attention of the Business

Committee that there is a need to empower the Kiowa Tribal Gaming Commission to promulgate and finalize regulations on an emergency basis, in all circumstances in which the Kiowa Tribal Gaming Commission finds that an emergency exists which requires the immediate promulgation of regulations to avoid an eminent threat to the integrity of Tribal gaming or the financial yield therefrom, and

**WHEREAS,** Article 27 (Agent for Service of Process) of the Gaming Ordinance of 2005 provides for the agents for service of any official determination, order, or notice of violation by the NIGC pursuant to 25 C.F.R. § 519.1, but leaves the designation of the agents for the KCOA and the Kiowa Tribal Gaming Commission, to be made at a later date, and the Business Committee finds that the designation of such agents at this time is consistent with the orderly and effective regulation of the Tribe's gaming,

**WHEREAS,** the Kiowa Tribal Gaming Commission has reviewed the following amendments to the Gaming Ordinance of 2005 and recommends them as necessary to promote the effective regulation, oversight and supervision of gaming operations of the Tribe consistent with the IGRA, the regulations of the NIGC, the provisions of the Compact and the Pre-Opening Agreement and the declared policy of the Tribe as set forth in Article 1 of the Gaming Ordinance of 2005,

**NOW, THEREFORE IT BE AND IT HEREBY IS**

**RESOLVED,** that Article 12 (Dispute Resolution of the Gaming Ordinance of 2005) be and it hereby is repealed and in lieu thereof, the following is hereby promulgated:

**"ARTICLE 12. DISPUTE RESOLUTION"**

- (A) **Tort Claims.** The resolution of claims involving demands or liability for bodily injury and property damages arising out of or relating to the operation of any Gaming Facility, are to be governed by regulations promulgated by the Gaming Commission; provided that such regulations shall not expose any Gaming Operation to liability to a Patron for a tort claim in excess of amounts of liability insurance required to be provided under any Tribal-State Compact, and further provided that no real estate or tribal property, other than the separate personal property of the Kiowa Casino Operations Authority, shall be exposed to liability arising out of any Patron's tort claim.
- (B) **Prize Claims.** The resolution of claims involving disputes relating to a Patron's entitlement to a game prize are to be governed by regulations promulgated by the Gaming Commission; provided that such regulations shall not expose any Gaming Operation to liability to a Patron for a prize claim in excess of the prize limit, and further

provided that no real estate or tribal property, other than the separate personal property of the Kiowa Casino Operations Authority, shall be exposed to liability arising out of any Patron's prize claim.

- (C) Limited Consent to Suit for Tort Claims and Prize Claims. An individual may initiate an action in a court of competent jurisdiction for a tort claim or a prize claim if:
- (1) the individual has followed all the procedures established pursuant to regulations promulgated by the Gaming Commission; and
  - (2) the action is instituted in a manner consistent with the procedures established pursuant to regulations promulgated by the Gaming Commission.
- (D) No court may have jurisdiction over an action under Subsections (A) or (B) which is not instituted in a manner consistent with the procedures established by the Gaming Commission.

**AND BE IT FURTHER,**

**RESOLVED,**

that paragraph 12 (Regulations) of Article 8, section (j) of the Gaming Ordinance of 2005 be and it hereby is repealed and the following is hereby promulgated in lieu thereof:

- (a) Any regulation promulgated by the Gaming Commission pursuant to the authority granted under this Ordinance shall be valid to the extent not inconsistent with this Ordinance and the Tribal Constitution and shall have the force of law equivalent to this Ordinance.
- (b) To enact, amend or revoke any regulation under this Ordinance, the Gaming Commission shall first publish a notice of proposed rulemaking by written notice served by certified mail, return receipt requested upon the agent for service of process of the Tribe, the KCOA, and any management contractor.
- (c) The notice shall set out the full text of the proposed regulation, amendment or revocation, and except in the case of emergency regulations promulgated hereunder, shall invite written comment. Except in the case of emergency regulations, the notice shall state the deadline for submission of written comments and the address where written comments shall be sent.

- (d) Except in the case of emergency regulations, the deadline for written comments shall be no earlier than fourteen (14) days following the date upon which the notice is served upon the respective service agents. The notice shall as applicable also announce the date, time and place at which the Gaming Commission is to hold a public hearing regarding the proposed regulation and any written comments received in respect thereof. The date of such hearing shall be no earlier than fourteen (14) days following the latest date upon which the written comments are to be received; provided however that if by the latest date for the Gaming Commission's receipt of written comments, as announced in the notice, the Gaming Commission shall have received no written comments, then the Gaming Commission shall have the authority to forego the hearing and to declare final, the proposed regulation, as originally published and/or with any reasonable amendments or revisions after publication determined by the Gaming Commission.
- (e) Hearings required hereunder shall be held in one of the following locations: Anadarko, Carnegie, Chickasha or Lawton, Oklahoma as determined by the Gaming Commission. Such location shall be announced in the written notice of the proposed rulemaking.
- (f) At the hearing the Gaming Commission shall afford to the Tribal Chairman, to members of the Business Committee, to members of the KCOA Board of Trustees, to executive officers of the KCOA, to any Management Contractor and to legal counsel representing any of them, the opportunity to provide oral testimony or comment regarding the proposed regulation. The Gaming Commission shall not otherwise be required to receive oral testimony or comment, at such hearings.
- (g) If the Gaming Commission at any time finds that an imminent peril exists to the integrity or profitability to the Tribe of Kiowa Gaming, or to the preservation of the public health, safety or welfare at any Kiowa gaming facility, or that a compelling public interest requires an emergency rule, amendment, revision or revocation of an existing rule, the Gaming Commission may promulgate, at any time, any such rule, the effectiveness whereof, however, shall be limited to one hundred twenty (120) days following the date of its initial promulgation. An emergency regulation adopted by the Gaming Commission shall include a statement in reasonable detail of the Gaming Commission's finding of the emergency requiring the regulation, the basis of that finding, and the impact of the emergency regulation.

The Gaming Commission shall not however adopt any emergency regulation which increases fees or administrative charges. If an emergency regulation is of a continuing nature, the Gaming Commission shall, at the same time that it promulgates an emergency regulation, initiate proceedings for promulgation of a permanent regulation, subject to the comment period requirements applicable thereto. Any promulgated emergency regulation shall be made ineffective if superceded by the promulgation of permanent regulation, or if earlier, on its expiration date. Requirements of this Article relating to notice and hearing shall not be applicable to emergency regulations promulgated pursuant to the provisions of this paragraph.

- (h) Except in the case of emergency regulations, when a hearing is required for reason of written comments received pursuant to the applicable deadline, the Gaming Commission shall publish the full text of its final regulation in the same manner as it is required to publish the notice of proposed rulemaking.

**AND BE IT FURTHER,**

**RESOLVED,** that Article 13 (Licenses for Key Employees and Primary Management Officials), paragraph (d) (Ineligible Persons) of the Gaming Ordinance of 2005 be and it hereby is repelled, and in lieu thereof the following is hereby promulgated.

- (d) Ineligible Persons. No license shall in any event be issued to or renewed for an applicant who:
- (1) is a member of the Kiowa Business Committee or the Gaming Commission;
  - (2) is not a person of good character, honesty, and integrity;
  - (3) has knowingly and willfully provided materially false statements or information to the Gaming Commission pursuant to the Act or this Ordinance, or has refused to comply with a request for additional information from the Gaming Commission or the NIGC pursuant to a license application;
  - (4) is determined by the Gaming Commission to be unsuitable under the licensing criteria of this Ordinance;

- (5) has had their gaming license revoked for cause in any jurisdiction;
- (6) is delinquent in the payment of any obligation owed to the Gaming Commission pursuant to this Ordinance or any regulations promulgated by the Gaming Commission; or
- (7) has failed to comply with the Act, the regulations of the National Indian Gaming Commission, this Ordinance, or any regulation promulgated by the Gaming Commission.

**AND BE IT FURTHER,**

**RESOLVED**, that Article 27 (Agent for Service of Process) of the Gaming Ordinance of 2005, paragraph (b)(Agent for the Gaming Commission) be and it hereby is repealed, and in lieu thereof the following is hereby promulgated.

- (b) Agent for the Gaming Commission. Executive Director of the Gaming Commission or in his absence the Tribal Gaming Chairman are hereby designated as the agent for service of any official determination, order or notice of violation by the NIGC, any official notice by either the KCOA or the Business Committee, and service of court process in respect of appeals taken pursuant to Article 20 (Hearings and Appeals), paragraph (c) (Petition for Review) of this Ordinance. The Executive Director or in his absence, the Tribal Gaming Chairman may be contacted at: 2429 Ponderosa Drive, Chickasha, OK 73018. The Gaming Commission may change the service agent designation from time to time by resolution and upon notice to the NIGC, the KCOA and the Business Committee.

**AND BE IT FURTHER,**

**RESOLVED**, that Article 27 (Agent for Service of Process), paragraph (d) (KCOA Service Agent) be and hereby is repealed and in lieu thereof the following is promulgated.

- (d) KCOA Service Agent. The Chief Executive Officer of the KCOA is hereby designated as its Agent for Service of any official determination, order, notice of violation, notice of proposed rulemaking or other official communication by the NIGC pursuant to 25 C.F.R. §59.1 and by the Kiowa Tribal Gaming Commission pursuant to this Ordinance. The Chief Executive Officer may be contacted at 2215

N.W. Cache Road - Suite 103, Lawton, Ok 73505-5214.  
The KCOA may change the service agent designation from time to time by resolution and upon notice to the NIGC, the Gaming Commission and the Business Committee. A copy of any official determination, order, notice of violation or other notice by the NIGC or the Kiowa Tribal Gaming Commission shall be sent by certified mail, return receipt requested, to the Chief Executive Officer of the KCOA.

AND BE IT, AND IT HEREBY IS,

RESOLVED, that the foregoing amendments to the Gaming Ordinance of 2005 shall be and become effective immediately upon approval by the Chairman of the NIGC.

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CERTIFICATION

The foregoing Resolution CY-2007-116 was duly adopted at a Monthly Meeting of the Kiowa Business Committee duly called and held on Saturday, March 3, 2007, at the Kiowa Tribal Complex, Carnegie, Oklahoma, with a vote of 7 for, 0 against, 0 abstentions, with a quorum being present.

ATTEST:

WITNESS:

Ernestine Hernasy  
Ernestine Hernasy, Secretary

Billy Evans Horse  
Billy Evans Horse, Chairman

